

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAY PACER, *et al.*

Defendants.

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CASE NO. 1:19-cv-01984

Honorable Lindsay C. Jenkins

THE ESTATE’S UNOPPOSED MOTION TO VACATE SECURITY ORDER

Substituted Defendant Margaret E. Cumming, solely in her capacity as personal representative of the Estate of David Cumming (the “Estate”), through the undersigned counsel, respectfully moves the Court for the entry of an Order vacating the Stipulated Order Approving Security to Stay Execution of Judgment against Cumming Estate Pending Appeal (Dkt. 341) (the “Security Order”) because the United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) reversed the decision to substitute the Estate herein, and thus there is no judgment against the Estate. In support of this Motion, the Estate states as follows:

1. This Court entered judgment against the Estate on January 23, 2024. (Dkt. 314.) The Estate filed a timely appeal. (Dkts. 315, 317.)

2. Thereafter, the Estate and the Federal Trade Commission (“FTC”) agreed to the terms of the Security Order, pursuant to which the FTC would stay execution of the judgment pending the Estate’s appeal.

3. On March 28, 2024, the Court entered the Security Order (Dkt. 341) pursuant to Rule 62, which Rule allows a judgment debtor to obtain a stay of proceedings to enforce a judgment pending appeal “by providing a bond or other security.” Fed. R. Civ. P. 62(b).

4. On January 3, 2025, the Seventh Circuit issued an opinion and judgment reversing this Court's decision to substitute the Estate. Copies of the Seventh Circuit's opinion and judgment are attached hereto as Exhibits A and B, respectively.

5. Accordingly, there is no longer any judgment against the Estate for the FTC to enforce, so the Security Order should be vacated.

6. Counsel for the Estate has conferred with the FTC's counsel regarding this Motion and the FTC does not object to the relief requested herein.

WHEREFORE, the Estate respectfully requests that the Court enter an Order vacating the Security Order and granting the Estate such other and further relief as is appropriate.

Respectfully submitted,

MARGARET E. CUMMING, solely in her
capacity as personal representative of the
Estate of David Cumming

By: /s/ Christopher S. Moore
Her Attorney

Christopher S. Moore
CHRIS MOORE LAW LLC
220 North Green Street
Suite 4031
Chicago, Illinois 60607
chris@chrismoorelaw.com
Telephone -- 312.704.4444
ARDC No. 6256418

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 29, 2025 the foregoing **Unopposed Motion To Vacate Security Order** was electronically transmitted to the Court Clerk of the United States District Court, Northern District of Illinois, for filing and electronic notice to all attorneys of record.

/s/ Christopher S. Moore
Christopher S. Moore